

REMARKS

Claims 1-13, 16-19, 23-44, 47-50, 54-76, 79-82 and 86-106 are pending in the application.

Claims 1-13, 16-19, 23-44, 47-50, 54-76, 79-82 and 86-106 have been rejected.

Claims 1, 2, 6, 17, 23, 27, 32, 33, 48, 54, 58, 64, 68, 81, 86, 90, 91, 95, 97-102 and 104-106 have been amended, as set forth herein.

Claims 80 and 103 have been canceled, without prejudice.

Claim 107 has been added.

Dependent Claims 2, 6, 17, 27, 33, 48, 58, 68, 81, 90, 91, 99 and 102 have been amended solely for consistency and formality reasons.

I. **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-3, 8, 10-13, 16, 23-25, 30, 32-34, 39, 41-44, 47, 54-56, 61, 64-66, 71, 73-76, 79, 86-88, 93 and 104-106 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sakamoto et al. (US 6,075,767). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is

found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicant has amended independent Claims 1, 32 and 104-106 to recite that the interface redundancy group comprises first and second identifiers, respectively identifying the first physical interface as a primary interface for the device and the second physical interface as a second interface for the device. See amended Claims. Sakamoto fails to disclose two identifiers that identify two physical interfaces as primary and secondary interfaces for a device. Sakamoto's register 27 contains a single bit whose value, zero or one, causes selector 9 to select one or the other of its two inputs. See Col. 8, lines 9-25. Therefore, Sakamoto fails to anticipate the Applicant's claimed invention, which recites an interface redundancy group comprising first and second identifiers, respectively identifying a first physical interface as a primary interface for a device and a second physical interface as a second interface for the device.

Applicant has amended independent Claims 23, 54 and 86 to recite a step or instruction that establishes "two or more ATM network layer interfaces over the second ATM physical interface that correspond to ATM network layer interfaces that were established over the first ATM physical interface prior to switching." See amended Claims. Initially, the Applicant respectfully asserts that the Office Action mischaracterizes the teaching of Sakamoto at column 9, line 28, to column 10, line 9, as showing the establishment of an ATM network layer interface. The cited passage describes circuits that ensure, when the system of Sakamoto switches from transmission path 7-1 to transmission path 7-2, that the stream of cells output from the selector 9 is correctly counted. This

is very different than the actions of establishing an ATM network layer interface, which include by way of example, but neither require nor are limited to, actions such as establishing connections or virtual circuits between devices on an ATM network. Nonetheless, if the counting of cells on a transmission path as shown in Sakamoto is seen as teaching the establishment of an ATM network interface layer, Sakamoto teaches the counting of only a single stream of cells. Thus, Sakamoto fails to anticipate the Applicant's claimed invention, which recites establishing two or more ATM network interface layers over the second ATM physical interface.

Applicant has amended independent Claim 64 to recite that the claimed apparatus includes a third physical interface and that the processor also executes instructions to switch from the second physical interface to the third physical interface based on information in an interface redundancy group. See amended Claim. Selector 9 in the Sakamoto reference selects between line interface cards 1-1 and 1-2. See Figure 1. Moreover, the control for selector 9 consists of a single bit in a register, having one of two values. See Col. 8, lines 9-25. Therefore, Sakamoto fails to anticipate the Applicant's claimed invention, which recites an apparatus comprising three physical interfaces and a processor which executes instructions to switch from the first to the second physical interface and to switch from the second to the third physical interface.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 1-3, 8, 10-13, 16, 23-25, 30, 32-34, 39, 41-44, 47, 54-56, 61, 64-66, 71, 73-76, 79, 86-88, 93 and 104-106.

II. REJECTION UNDER 35 U.S.C. § 103

Claims 4, 26, 35, 57, 67, 89, 95, 98 and 101 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto as applied to Claims 1, 23, 32, 54, 64 and 88 above, and further in view of Kajitani et al. (US 6,643,254). Claims 5, 27, 36, 58, 68 and 90 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto and Kajitani as applied to Claims 4, 26, 35, 57, 67 and 89 respectively above, and further in view of Huscroft et al. (US 5,889,778). Claims 6, 28/96, 37, 59/99, 69 and 91/102 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto, Kajitani and Huscroft as applied to Claims 5, 27, 36, 58, 68 and 90 respectively above, and further in view of Wtanabe et al. (US 6,246,665). Claims 7, 29/97, 38, 60/100, 70 and 92/103 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto as applied to Claims 1, 23, 32, 54, 64 and 88 respectively above, and further in view of Pepper (US 5,461,609). Claims 9, 31, 40, 62, 72 and 94 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto as applied to Claims 1, 23, 32, 54, 64 and 88 respectively above, and further in view of Sakamoto et al. (US 5,903,544). Claims 17-19, 48-50 and 63 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto as applied to Claim 1 above, and further in view of Mahalingam (US 6,208, 616). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re*

Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

Dependent Claims 4-7, 9, 17-19, 26-29, 31, 35-38, 40, 48-50, 57-60, 62, 63, 67-70, 72, 89, 90-92 and 94 depend directly or indirectly from independent Claims 1, 23, 32, 54, 64, 86 and

contain their respective limitations. As such, for the reasons set forth above in response to the § 102(e) rejection of independent Claims 1, 23, 32, 54, 64, 86, the Applicant respectfully submits that none of the references, taken alone or in combination, teach or suggest all the claim limitations in dependent Claims 4-7, 9, 17-19, 26-29, 31, 35-38, 40, 48-50, 57-60, 62, 63, 67-70, 72, 89, 90-92 and 94.

Applicant has amended independent Claims 95, 97, 98 and 100 to recite that the claimed method or computer program includes a step of establishing two or more ATM network layer interfaces that correspond to ATM network layer interfaces established over the first ATM physical interface prior to switching. See amended Claims. For the reasons set forth above in response to the § 102(e) rejection of independent Claims 23, 54 and 86, Sakamoto does not teach such a limitation. The Applicant respectfully submits that neither does Kajitani or Pepper teach such a limitation. Thus, none of the references, taken alone or in combination, teach or suggest all the claim limitations of independent Claims 95, 97, 98 and 100 (or Claims 96 and 99 depending therefrom).

Applicant has amended independent Claim 101 to recite an apparatus having first, second and third physical interfaces and a processor that executes instructions to switch from the first to the second physical interface upon detection of a first event at the first physical interface and to switch from the second to the third physical interface upon detection of a second event at the second physical interface. See amended Claim. For the reasons set forth above in response to the § 102(e) rejection of independent Claim 64, the Applicant respectfully submits that none of the references

cited against independent Claim 101 or dependent Claim 102, taken alone or in combination, teach or suggest all the claim limitations in independent Claim 101.

Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejections of Claims 4-7, 9, 17-19, 26-29, 31, 35-38, 40, 48-50, 57-60, 62, 63, 67-70, 72, 89, 90-92, 94-101 and 102.

III. NEW CLAIMS

New Claim 107 depends from independent Claim 101 and therefore contains its limitations. For the reasons set forth above in response to the § 103(a) rejection of independent Claim 101, the Applicant respectfully submits that none of the references, taken alone or in combination, teach or suggest all the claim limitations in dependent Claim 107. Thus, the Applicant believes new Claim 107 is patentable over the art of record.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

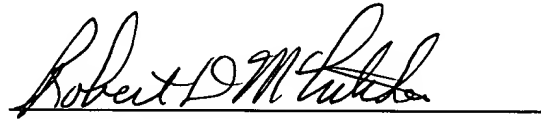
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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